IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4977 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARSHOTTAMBHAI BHIKHABHAI PRAJAPATI

Versus

POLICE COMMISSIONER

Appearance:

MR NM KAPADIA for Petitioner

MR DN PATEL, AGP, for Respondent No. 1, 2

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 03/03/2000

ORAL JUDGEMENT

1. The petitioner - detenue has moved this Court by way of this petition under Article 226 of the Constitution, as he has been detained under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as `the

PASA Act'], by the Commissioner of Police, Ahmedabad, by order dated 3/7/1999 annexed to the petition vide Annexure `A'.

2. Reading the order of detention, it appears that the detenue is in habit of indulging in antisocial activities. He was arrested for offences punishable under sections 66[B], 65[A][E], 116 and 81 of the Bombay Prohibition Act, as he was found with 273 bottles of foreign liquor valued at Rs.46,050/- on or about 25/6/1999. The Maninagar police station registered the offence as Cr.R. No. 5095/99. In the grounds of detention, it is stated that the remand report, order, bail application, order etc. were taken into consideration while detaining the detenue. Surprisingly, the detenue was a police constable and after retirement, he is engaged in this nefarious activities. The Commissioner of Police, it appears that in the instant case, has mechanically passed the order, inasmuch as the papers of bail application supplied to the detenue which according to the detaining authority has considered, are quite different. The attention of the Court is drawn at page 46 of the compilation supplied to the detenue by the detaining authority which has been taken into consideration. Page 46 is xerox copy of an application for bail dated 2/7/1999 submitted in connection with Maninagar police station [Prohibition] Cr.R. No. 363/99, while the detaining authority has considered the bail application pertaining to Cr.R. No. 5095/99. This clearly appears to be non-application of mind and therefore, the order passed by the detaining authority is required to be quashed and set aside.

3. This Special Civil Application is allowed. The impugned order of detention dated 3/7/1999 is quashed and set aside. The detenue is hereby ordered to be released forthwith, if he is not required in any other case. Rule made absolutely with no orders as to costs.

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